IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1896 of 2004

SMT.JAMANA & ANR.
V/S
AYUB BHAI & ANR.

Mr. SURENDRA SURANA, for the appellant / petitioner

Date of Order : 5.4.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The only submission made is, that the amount awarded is inadequate. I have considered the submission and have perused the record, which was requisitioned vide order dated 17.12.2004.

The claim petition has been filed by two persons, being the parents of the deceased. The mother has mentioned her age to be 53 years, and father's age is mentioned to be 56 years, while in para-22, the deceased was pleaded to be 38 years. According to the claim petition, the deceased was working as a guide, and was earning Rs.6000/- per month from the said job. Inter-alia with these averments, various amounts have been claimed by way of compensation. The accident is said to have occurred on 2.9.2003, during trial, the claimants have examined only the mother Jamna Devi, and have not produced any other oral evidence, while in documentary evidence, certain documents, like F.I.R., Registration Certificate of the vehicle involved in the accident, the Insurance Cover, Final Report of the investigation, the written report submitted to the Police, Injury Report, the notice given under Section 133, site plan-cum-site inspection note, Post Mortem Report, and Ex.14, being the guide identity card, issued by Abu Guide Union, have been produced.

The learned Tribunal, while deciding issue No.2, relating to quantum has found, that in view of the post mortem report, the deceased was found to be 40 years of age, and has held the age of the claimant

Jamna to be somewhere between 67 to 72, while that of Kishan Lal to be somewhere between 70 to 75. With this, it has also been found, that the guide identity card, being Ex.14, has been got subsequently prepared purposefully (बनावटी रूप से), which also doesn't bear the signature of the person to whom the card is issued, and with this, the learned trial Court has not believed the evidence, the statement of the mother, about the income, and has assessed the income at Rs.60/- per day, and employing the multiplier of 5, the compensation has been calculated, and with adding other admissible amounts, the award has been passed.

It is contended by learned counsel for the appellant, that Jamna has deposed her age to be 53 years, on which she has not been cross-examined, and simply because she had admitted, that her husband retired some 10-15 years ago, merely from that, it cannot be concluded, that the age of the claimants was as found by the learned Tribunal. Then regarding income, he has submitted, that Jamna has deposed the deceased to be earning Rs.6000/- per month, on which there is no cross-examination, and therefore, the finding about income is also bad.

I have considered the submissions, and have closely scanned the record.

Suffice it to say, that from the very fact, that in the claim petition, the claimants have mentioned their age to be 53 and 56 years respectively, it has but to be concluded, that according to the claimants, the difference between age of the two spouse was around three years only, with this, from the admission of the claimant-mother, about her husband being retired 10-15 years ago, even if it is taken that he retired 10 years ago, and the wife is three years younger to the husband, still in any case, the age of the two spouse comes to the span of 60 years, and above, within the meaning of Schedule appended to the Motor Vehicles Act. The photos of the two claimants are appended on the claim petition, and even from a bare look at those photos, it cannot be believed, that the claimants were 53 and 56 years of age, as sought to be contended. Therefore, may be, that the finding of the learned Tribunal, assessing the age to be between 70 to 75 years, and 67 to 72 years, may not be very correct, but then, in any case, the

claimants are within the age group of 60 and above, therefore, the multiplier of 5 as employed by the Tribunal, on the parameters laid down in the Second Schedule, cannot be said to be wrong.

Coming to the income, true it is, that the mother has deposed, that the deceased was earning Rs.6000/- per month, but then, her bare ipsi-dixit cannot be accepted, for the simple reason, that it is clear on record, that attempts are made to fabricate the evidence to support the exaggerated claim, inasmuch as, Ex.14 has been got prepared much after the accident, and filed, it has been got prepared on 17.12.2003, and is said to be valid upto 16.12.2004, while the deceased had expired in the accident on 3.9.2003, as appears from the post mortem report, Ex.13. With this, it is also clear that the mother has not deposed any basis for this calculation of income, and she was clearly suggested, that the deceased was not working as guide, rather he was busy in नेतागिरी only. She was also suggested, that he was living separately, and was not supporting them.

Thus, in the totality of circumstances, it cannot be said, that there is any reliable, and convincing, evidence about the income of the deceased. That being the position, I do not find any error in the finding recorded by the learned Tribunal about the income.

The appeal thus, has no force, and is dismissed summarily.

(N P GUPTA),J.

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